

(2) *Airline transportation.* The escorting officer(s) must abide by all Federal Aviation Administration and airline carrier rules and regulations pertaining to weapons and the transportation of prisoners.

(e) *Vehicular pursuit.* (1) A vehicular pursuit is an active attempt by a designated immigration officer, as listed in paragraph (e)(2) of this section, in a designated pursuit vehicle to apprehend fleeing suspects who are attempting to avoid apprehension. A designated pursuit vehicle is defined as a vehicle equipped with emergency lights and siren, placed in or on the vehicle, that emit audible and visual signals in order to warn others that emergency law enforcement activities are in progress.

(2) The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to initiate a vehicular pursuit:

(i) Border patrol agents, including aircraft pilots;

(ii) Supervisory personnel who are responsible for supervising the activities of those officers listed above; and

(iii) Immigration officers who need the authority to initiate a vehicular pursuit in order to effectively accomplish their individual mission and who are designated, individually or as a class, by the Commissioner.

(f) *Site inspections.* (1) Site inspections are Service enforcement activities undertaken to locate and identify aliens illegally in the United States, or aliens engaged in unauthorized employment, at locations where there is a reasonable suspicion, based on articulable facts, that such aliens are present.

(2) An immigration officer may not enter into the non-public areas of a business, a residence including the curtilage of such residence, or a farm or other outdoor agricultural operation, except as provided in section 287(a)(3) of the Act, for the purpose of questioning the occupants or employees concerning their right to be or remain in the United States unless the officer has either a warrant or the consent of the owner or other person in control of the site to be inspected. When consent to enter is given, the immigration officer must note on the offi-

cer's report that consent was given and, if possible, by whom consent was given. If the immigration officer is denied access to conduct a site inspection, a warrant may be obtained.

(3) Adequate records must be maintained noting the results of every site inspection, including those where no illegal aliens are located.

(4) Nothing in this section prohibits an immigration officer from entering into any area of a business or other activity to which the general public has access or onto open fields that are not farms or other outdoor agricultural operations without a warrant, consent, or any particularized suspicion in order to question any person whom the officer believes to be an alien concerning his or her right to be or remain in the United States.

[59 FR 42418, Aug. 17, 1994]

#### **§ 287.9 Criminal search warrant and firearms policies.**

(a) A search warrant should be obtained prior to conducting a search in a criminal investigation unless a specific exception to the warrant requirement is authorized by statute or recognized by the courts. Such exceptions may include, for example, the consent of the person to be searched, exigent circumstances, searches incident to a lawful arrest, and border searches. The Commissioner shall promulgate guidelines governing officers' conduct relating to search and seizure.

(b) In using a firearm, an officer shall adhere to the standard of conduct set forth in § 287.8(a)(2). An immigration officer may carry only firearms (whether Service issued or personally owned) that have been approved pursuant to guidelines promulgated by the Commissioner. The Commissioner shall promulgate guidelines with respect to:

(1) Investigative procedures to be followed after a shooting incident involving an officer;

(2) Loss or theft of an approved firearm;

(3) Maintenance of records with respect to the issuance of firearms and ammunition; and

## § 287.10

(4) Procedures for the proper care, storage, and maintenance of firearms, ammunition, and related equipment.

[59 FR 42420, Aug. 17, 1994]

### **§ 287.10 Expedited internal review process.**

(a) *Violations of standards for enforcement activities.* Alleged violations of the standards for enforcement activities established in accordance with the provisions of § 287.8 shall be investigated expeditiously consistent with the policies and procedures of the Office of Professional Responsibility and the Office of the Inspector General of the Department of Justice and pursuant to guidelines to be established by the Attorney General. Within the Immigration and Naturalization Service, the Office of Internal Audit is responsible for coordinating the reporting and disposition of allegations.

(b) *Complaints.* Any persons wishing to lodge a complaint pertaining to violations of enforcement standards contained in § 287.8 may contact the Department of Justice, P.O. Box 27606, Washington, DC, 20038-7606, or telephone 1-800-869-4499.

(c) *Expedited processing of complaints.* When an allegation or complaint of violation of § 287.8 is lodged against an employee or officer of the Service, the allegation or complaint shall be referred promptly for investigation in accordance with the policies and procedures of the Department of Justice. At the conclusion of an investigation of an allegation or complaint of violation of § 287.8, the investigative report shall be referred promptly for appropriate action in accordance with the policies and procedures of the Department of Justice.

(d) *Unsubstantiated complaints.* When an investigative report does not support the allegation, the employee or officer against whom the allegation was made shall be informed in writing that the matter has been closed as soon as practicable. No reference to the allegation shall be filed in the official's or employee's official personnel file.

(e) *Jurisdiction of other Department of Justice organizations.* Nothing in this section alters or limits, is intended to alter or limit, or shall be construed to alter or limit, the jurisdiction or au-

## 8 CFR Ch. I (1-1-97 Edition)

thority conferred upon the Office of the Inspector General, the Office of Professional Responsibility, the Federal Bureau of Investigation, the United States Attorneys, the Criminal Division or the Civil Rights Division, or any other component of the Department of Justice, or any other order of the Department of Justice establishing policy or procedures for the administration of standards of conduct within the Department of Justice.

[59 FR 42420, Aug. 17, 1994]

### **§ 287.11 Scope.**

With regard to this part, these regulations provide internal guidance on specific areas of law enforcement authority. These regulations do not, are not intended to, and shall not be construed to exclude, supplant, or limit otherwise lawful activities of the Immigration and Naturalization Service or the Attorney General. These regulations do not, are not intended to, shall not be construed to, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal. The Attorney General shall have exclusive authority to enforce these regulations through such administrative and other means as he or she may deem appropriate.

[59 FR 42420, Aug. 17, 1994]

## **PART 289—AMERICAN INDIANS BORN IN CANADA**

Sec.

289.1 Definition.

289.2 Lawful admission for permanent residence.

289.3 Recording the entry of certain American Indians born in Canada.

AUTHORITY: Secs. 103, 262, 289, 66 Stat. 173, 224, 234; 8 U.S.C. 1103, 1302, 1359; 45 Stat. 401, 54 Stat. 670; 8 U.S.C. 226a, 451.

### **§ 289.1 Definition.**

The term *American Indian born in Canada* as used in section 289 of the Act includes only persons possessing 50 per centum or more of the blood of the American Indian race. It does not include a person who is the spouse or child of such an Indian or a person whose membership in an Indian tribe